

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7579

Investigation into Compliance of Town of)
Stowe Electric Department, with Requirements)
for the Use of General Obligation Bond)
Proceeds)

Order entered: 12/23/2009

**ORDER OPENING INVESTIGATION
AND NOTICE OF PREHEARING CONFERENCE**

I. INTRODUCTION

In this Order, the Vermont Public Service Board ("Board") commences an investigation, pursuant to 30 V.S.A. § 30, into the compliance of the Town of Stowe Electric Department ("Stowe") with requirements for the use of General Obligation Bond proceeds in the amount of \$1.6 million (the "Bonds"). In this investigation, the Board will also determine whether penalties should be imposed for any non-compliance with those requirements.

II. BACKGROUND

In Docket 7458, on October 30, 2008, the Board approved a long-term debt financing request by Stowe authorizing Stowe to issue up to \$18.7 million in non-amortizing indebtedness to finance its purchase of 1,870,000 equity units from Vermont Transco LLC in compliance with the terms of the Uncontested Settlement Agreement ("Settlement") resolving issues of cost allocation between participating utilities related to construction of the Lamoille County Project ("LCP"),¹ and to issue up to \$4 million in general-obligation bonds to finance Exclusive Facilities costs associated with the LCP and general capital improvements to Stowe's distribution system.

1. See Docket No. 7310, Order of 10/15/08 at 2-9.

The Order issued in Docket 7458 provided that:

Pursuant to 30 V.S.A. § 108, consent is hereby given to Stowe to issue up to \$18.7 million in non-amortizing indebtedness to finance its purchase of 1,870,000 equity units from Vermont Transco LLC in compliance with the terms of the Uncontested Settlement Agreement, and to issue up to \$4 million in general obligation bonds to finance \$1.6 million in Exclusive Facilities costs and \$2.4 million for capital improvements to Stowe's distribution system, according to terms and rates consistent with the Findings above.²

Finding No. 5 of the Order states:

5. Under the Settlement, Stowe is also required to pay a fixed annual contribution of \$1.1 million to cover the carrying charges for the Specific Facilities over a period of ten years, and a total of \$1.6 million to cover the Exclusive Facilities³ costs for the Project. In its amended Petition, Stowe is seeking authority to issue general obligation bonds to finance its \$1.6 million obligation for the Exclusive Facilities costs and will pay the net carrying costs of the Specific Facilities obligation out of operating revenue.⁴

On October 28, 2009, the Board issued an Order in Docket 7565 approving a financing request from Stowe to finance the purchase of Vermont Transco LLC equity units in the amount of \$18.7 million. In the course of reviewing Stowe's petition in Docket 7565, the Board discovered that the \$1.6 million of general obligation bond proceeds that had been approved in Docket 7458 for financing Exclusive Facilities costs had, instead, been used by Stowe to defray legal costs incurred with respect to the Settlement. In its Order in Docket 7565, the Board

2. Docket No. 7458, Order of 10/30/08 at 8-9.

3. The term "Exclusive Facilities" as used in this Order is defined in Article IV of the 1981 Substation Participation Agreement between Vermont Transco and each Vermont distribution utility as "the facilities required by PARTICIPANT for the operation and control of its own system, and not by VELCO..."

4. Docket No. 7458, Order of 10/30/08 at 4-5. This Finding is substantially similar to the proposed Finding No. 5 of the proposed order attached as Exhibit A to the Stipulation between the Department of Public Service ("Department") and Stowe dated October 20, 2008 (the "Stipulation") which provides:

5. The Settlement also requires Stowe to pay a fixed \$1.1 million per year in carrying charges for the Specific Facilities components of the Lamoille County Project for a period of ten years and caps Stowe's Exclusive Facilities cost at a total of \$1.6 million for the project. Stowe is seeking authority from the Board to issue general obligation bonds in the principal amount of \$1.6 million to finance its obligation for Exclusive Facilities costs and will pay the net costs of its Specific Facilities obligation out of operating revenue.

outlined its concerns regarding Stowe's leveraged financial condition and Stowe's apparent diversion of \$1.6 million in general obligation bond proceeds. Because those bond proceeds had been approved in Docket 7458 to meet the Exclusive Facilities costs of the LCP, the Board concluded that Stowe appeared to have violated the previous Order and asked the parties whether the Board should conduct an investigation.⁵

On November 13, 2009, Stowe filed a letter with the Board in response to those concerns. Stowe argues that no investigation is necessary because its use of the \$1.6 million in bond proceeds was part of a prudent cash-management strategy intended to free-up its existing credit line and reduce its interest expense while waiting for presentment of its Exclusive Facilities bill. Stowe also contends that it shares the Board's concerns regarding Stowe's increasing debt levels and that it will carefully scrutinize future borrowing needs going forward. The Department filed comments on November 13 in support of Stowe's response.

Stowe's November 13 filing raises significant questions about Stowe's compliance with the requirements of the Board's Order issued in Docket 7458.⁶ As noted above, the Board's Order in Docket No. 7458 approved the general obligation bonds "to finance \$1.6 million in Exclusive Facilities costs and \$2.4 million for capital improvements to Stowe's distribution system" Now, in a departure from that Order, it appears that Stowe applied the \$1.6 million instead to other purposes, and intends to "pay the bill for Exclusive Facilities upon its receipt

5. See Docket No. 7565, Order of 10/28/09 at 7.

6. In addition, Stowe's relating of events is unclear and appears to be inconsistent in the following respects: The time-line set out in Stowe's letter of November 13 does not appear consistent with filings that were previously submitted by Stowe. In its letter, Stowe represents that the bond proceeds in question (\$1.6 million out of a total issuance of \$4.2 million in general-obligation debt) were received by Stowe in late 2008 and that Stowe was initially uncertain as to how to apply those funds since the Exclusive Facilities charges were not yet due and deposit rates were unfavorably low. Stowe indicates, ambiguously, that the funds were available for paying down its line of credit balance, as apparently recommended by bond counsel, but that Stowe opted instead to utilize a bond anticipation note, at a lower interest rate, for that purpose. It remains unclear what became of the bond proceeds during that time frame other than Stowe's assurance that "the \$1.6 million has been continuously available for the payment of the Exclusive Facilities bill." Conversely, Patrick Householder's e-mail response of October 22, 2009, indicates that the general-obligation bond proceeds were received by Stowe not in 2008 but in 2009 as part of "the 2009 Bond Bank Series issue (total of \$4.0M)," and were applied on or around July 2009 to payoff the bond anticipation note as opposed to being held in reserve to cover the Exclusive Facilities charges.

from the existing line of credit."⁷ If so, Stowe has elected to support long-term assets with short-term debt contrary to sound business practice and its representations to the Department and the Board in Docket No. 7458. In addition, by fully utilizing its existing credit line availability to pay the \$1.6 million in Exclusive Facilities charges, it appears that Stowe will constrain itself by depleting an important source of working capital to meet ongoing expenses and/or unplanned contingencies.

Therefore, today, we open an investigation into Stowe's compliance with the Final Order in Docket 7458. The investigation will also consider what penalties, if any, should be imposed on Stowe for any failure to comply with that Order.

III. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Pursuant to 30 V.S.A. §§ 30, 203, and 209, an investigation is commenced regarding the compliance of the Town of Stowe Electric Department with the Final Order in Docket 7458.
2. Pursuant to 30 V.S.A. § 8, Jay E. Dudley, Utilities Analyst, is appointed to serve as the Hearing Officer for this Docket.
3. Pursuant to 30 V.S.A. Section 10, the Hearing Officer will hold a prehearing conference in this matter on Thursday, January 7, 2010, commencing at 1:30 P.M., at the Public Service Board Hearing Room, Third Floor, Chittenden Bank Building, 112 State Street, Montpelier, Vermont.

7. Stowe letter dated 11/13/09 at 2.

Dated at Montpelier, Vermont, this 23rd day of December, 2009.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: December 23, 2009

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)